Will the SACU Agreement affect
SA trade policy?

The Southern African Customs Union (SACU), a common customs area consisting of South Africa, Botswana, Lesotho, Namibia and Swaziland, has been around for a very long time. The recently negotiated new version of the SACU Agreement could potentially create serious problems for the administration of SA trade policy, especially in relation to tariffs, anti-dumping actions and rebate dispensations. ***Michael McDonald*** *analyses the implications for the country.*

The SACU Agreement first put in place many years ago provided that South Africa would handle customs administration, especially in respect of import tariffs, on behalf of the entire customs union.

Originally, South Africa, relying on an import replacement policy, needed to ensure adequate control of imports and the application of protective import tariffs. As our neighbouring countries did not have the capacity to adequately administer an import control system, South Africa offered to do the job for the whole of the SACU countries as it was in this country's best interests.

However, right from the very start, because South Africa was administering relatively high import tariffs in order to protect local South African industries, the BLNS countries (Botswana, Lesotho, Namibia and Swaziland) had a serious problem with South Africa administering a common tariff for the whole of SACU. The BLNS countries had little or no industry to protect, so, because of the high tariffs imposed by South Africa, they were paying considerably more than needed for their imports of just about everything.

Thus was born the Common Revenue Pool, often called the 'customs pool'. All customs, excise and additional duties collected by the South African Department of Customs and Excise are paid into the Common Revenue Pool and is shared out among the SACU member countries, supposedly in proportion to the duties collected on imports destined for each of the SACU members in order to compensate the BLNS for the higher cost of imports due to the high tariffs.

It did not work this way in practice. In practice, South Africa collected the duties for all imports into the Common Customs Area and then each of the BLNS countries would declare how much was imported into their country. However, as there was no easy way for South Africa to verify the accuracy of the declared imports into each country, the BLNS countries tended to considerably overstate the value of their actual imports. So much so that for many years South Africa had been actually paying out substantially more money to the BLNS countries than they were actually collecting.

This was clearly inequitable. However, South Africa was happy to be generous to its neighbours in order to keep them quiet and allow it to conduct its own trade policy, but which affected the whole of the SACU, at a time when the country was at odds with the rest of the world on trade issues.

So it went on, South Africa imposed tariffs with little or no consultation with the BLNS countries who in turn collected more than their fair share of the duties. Although the South Africa government was becoming increasingly unhappy with this state of affairs, little was done until 1994. Long and often tedious negotiations started on amending the SACU Agreement.

Over the years, the South African Board on Tariffs and Trade (BTT) has administered changes to import tariffs. It also administers the issuing of import and export permits, anti-dumping and countervailing duties as well as rebates and drawbacks of import tariffs on goods imported for use in producing products for export.

The BLNS countries previously played no real role in the BTT, although the current legislation would allow for participation. The current Board (appointed in August 2000) even made overtures to the BLNS countries to encourage participation in BTT activities. While there was much criticism of the unilateral actions of the BTT, there was little interest shown by the BLNS members in making the process more transparent and democratic.

However, during the negotiations for a new SACU Agreement, which included a new way of calculating the customs pool shareout, the BLNS countries came up with a new complaint. Where previously they needed compensation through the customs pool for the higher cost of their imports because of South Africa's high import tariffs, now they insisted they needed additional compensation because tariffs were coming down as a result of the WTO Uruguay Round tariff cuts, the SA/EU Trade, Development and Co-operation Agreement and the new Southern African Development Community (SADC) Free Trade Agreement.

In an attempt to take the heat off the issue of the shareout of the customs pool revenues, the BLNS countries harped on the fact that the BTT, as it currently operates, was entirely undemocratic and they demanded more of a say in the determination of tariffs and such like.

This raises one of the key problems of the new SACU Agreement. Remember, in spite of a lot of other smokescreens, the BLNS countries' only real interest is the maximisation of the customs pool. Although maybe it should be, democratisation of the BTT functions was not a real issue.

Nevertheless, the new SACU Agreement (which is due to be ratified by Parliament later this year or early in 2003), in addition to spelling out an extremely elaborate new formula for determining shares in the customs pool, also includes a particularly cumbersome mechanism for the ultimate determining of all tariff changes, anti-dumping duties and other customs issues by a Council of Ministers of the SACU states.

At present, the BTT investigates tariff and other matters within its ambit and then through reports it makes recommendations for changes in tariffs, anti-dumping duties and the like to the Minister of Trade and Industry. The Minster in turn can either accept a recommendation of the Board or he can completely reject its report, but he cannot amend it. If he accepts a recommendation, he passes on an instruction to the Department of Customs and Excise through the Minister of Finance in order to amend the tariff.

The Board itself is shortly to be transformed through a new Act of Parliament into the Commission for International Trade Administration (CITA) which will operate similarly to the BTT with a few additional functions. However, reports and recommendations of the new CITA will no longer go directly to the South African Minster of Trade and Industry, but along a very circuitous route through a SACU Secretariat (based in a BLNS country and not in South Africa), a Commission of Senior Officials, a SACU Tariff Board and ultimately to a SACU Council of Ministers which will be comprised of Ministers of all the SACU countries and which will make its decisions through consensus. In addition there will be an independent Tribunal to arbitrate disputes which cannot be resolved by the Council of Ministers.

This appears by many to be entirely unworkable. Presently, there are no guidelines or regulations on how the different parts of this institutional framework will operate nor are there any timeframes in which they will operate.

Up until recently, the current BTT has met weekly, usually in all-day sessions (They are currently experimenting with bi-weekly meetings, but are finding it difficult to get through their agendas). How long it will take for a tariff amendment or other matter to get through this new proposed labyrinth is anybody's guess, but don't hold your breath.

Bearing in mind that the real issue for the BLNS countries is the maximisation of the customs pool, it is more than possible that BLNS ministers could oppose any recommendations that diminish the customs pool (lower tariffs, rebates of duty etc). So, lack of consensus on many issues is not necessarily unlikely. Then, with all this elaborate structuring to ensure democracy in decision making on trade issues, the final arbiters may be undemocratic appointed committees, (the Tribunal).

Furthermore, it would appear that, notwithstanding the possibly lengthy time delays involved in reaching decisions, South African trade policy could be held to ransom by any one of the BLNS countries. This is despite the fact that most of industry and 90% of the GDP of the whole region comes from South Africa.

It is becoming clear that there needs to be a rethink about how this new SACU Agreement is going to work.

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